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him on the ground of infancy when it was rendered to show his infancy by clear and satisfactory proof.

[Ed. Note.—For other cases, see Judgment, Dec. Dig., § 393.* 7 Va.-W. Va. Enc. Dig. 497 et seq.]

Appeal from Circuit Court, Tazwell County.

Action by Hurt & Hurt against Harman Blankenship and another, and suit by Hurt & Hurt against Harman Blankenship and another. From an order in the legal action vacating judgment rendered therein, plaintiffs appeal; and from a decree dismissing a petition for subrogation in the chancery suit an appeal was taken. Reversed.

J. Powell Royal and S. D. May, for appellants.

Henson & Bowen, for appellee.

SMITH v. SMITH.

Sept. 14, 1911.

[72 S. E. 119.]

1. Wills (§§ 548, 597*)—Construction—Estates Created—Fee Simple.—Testator directed that all his real estate be equally divided between his three sons, and that, if one or more should die leaving no issue, their share should fall back to the survivor, and they “to pay unto my four daughters hereinafter named the sum of \$100 to be paid twelve months after the death of my wife.” Held, that the three sons took a fee-simple estate with an additional limitation over, that, if any of them should die leaving no issue, his or their share should go to his or their surviving brothers or brother, and that the estate of the last surviving brother, if he should die leaving no issue, would not be defeated and go to his sisters, but would vest absolutely in him; there being no gift over.

[Ed. Note.—For other cases, see Wills, Dec. Dig., §§ 548, 597.* 13 Va.-W. Va. Enc. Dig. 826.]

2. Deeds (§ 8*)—Property Subject to Conveyance—Contingent Interests.—Under Code 1904, § 2418, which provides that any interest in real estate may be disposed of by deed, that an estate may be made to commence in futuro by deed, and that any estate which would be good as an executory devise or bequest is good if created by deed, devisees of fee-simple estates, with an additional limitation over that, if one or more of them should die leaving no issue, his or their share, as the case might be, should go to the surviving devisees or devisee, have the right to convey all their title in the lands devised, both present and contingent.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., § 16; Dec. Dig., § 8.* 4 Va.-W. Va. Enc. Dig. 419 et seq.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

3. Deeds (§ 124*)—Estates Created—Fee Simple.—Where an estate was devised to three brothers in fee simple, with an additional limitation over that, in the event of one or more of them dying without issue, his or their shares should go to the survivor, and by deeds of partition among themselves they relinquish their interest in the tract devised, with covenants of general warranty and recitals that the land conveyed was an undivided tract set apart to them by will, and that the object of the covenants was to make deeds of partition to each one and to grant described parts. Held, that under Code 1904, § 2438, relating to the construction of deeds, and section 2439, fixing the effect of certain words of release, that the language and warranty in the deeds was effectual to invest the grantee in each of those deeds with the absolute fee-simple title to that part of the land devised covered by the respective deeds.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 344-355; Dec. Dig., § 124.* 4 Va.-W. Va. Enc. Dig. 434; 10 Va.-W. Va. Enc. Dig. 120.]

Appeal from Circuit Court, Giles County.

Action by J. B. Smith against W. L. Smith. Judgment for plaintiff, and defendant appeals. Affirmed.

W. B. Snider, for appellant.

Harman & Pabst, for appellee.

SHOEMAKER *v.* CHAPMAN DRUG CO. et al.

Sept. 14, 1911.

[72 S. E. 121.]

1. Fraudulent Conveyances (§ 107*)—Confidential Relations—Family Relations.—A sale of land by a father to his son will not be set aside as a fraud upon his creditors merely because of the family relation.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., §§ 347-350; Dec. Dig., § 107.* 6 Va.-W. Va. Enc. Dig. 572, 674.]

2. Fraudulent Conveyances (§ 61*)—Insolvency.—A grantor's insolvency will not render a sale invalid, unless it was made to hinder, delay, and defraud his creditors.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., §§ 138-158; Dec. Dig., § 61.* 6 Va.-W. Va. Enc. Dig. 557.]

3. Fraudulent Conveyances (§ 271*)—Evidence—Sufficiency.—Fraud is never presumed, and fraud in a conveyance should not be assumed on doubtful evidence or circumstances of mere suspicion.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.